APPENDIX G

Oct 16 1972

MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Re: Monitoring Private Conversations with the Consent of a Party

This memorandum concerns the investigative use of electronic and mechanical devices secretly to overhear, transmit, or record private conversations when one or more of the parties to the conversation is a Federal agent or is cooperating with a Federal agent and has consented to the overhearing, transmitting, or recording of the conversation. This memorandum does not restrict any form of monitoring when all parties to the conversation consent, nor does it affect existing instructions on the related matter of electronic surveillance without the consent of any party to a conversation. (See Manual for Conduct of Electronic Surveillance under Title III of Public Law 90-351; and Outline of Duties and Responsibilities of Attorneys and Agency Personnel Involved in the Conduct of Title III Court Authorized Interceptions, distributed Nov. 3, 1970).

* * *

II. *Administrative Regulations Concerning Consensual Monitoring Conversations.*

The monitoring of conversations with the consent of one of the participants is a particularly effective and reliable investigative technique, and its use by Federal agents in investigating criminal cases is encouraged where appropriate and is expected where necessary. Nevertheless, although it is clear that such monitoring is constitutionally

and statutorily permissible—and therefore, that it may be conducted without judicial warrant—it is appropriate that this investigative technique continue to be the subject of careful self-regulation by the Executive Branch of the Federal Government. Accordingly, the following restrictions will apply in all criminal investigations employing the consensual monitoring of conversations.

(a) *Conversations other than telephone conversations.*

All Federal departments and agencies shall, except in exigent circumstances as discussed below, obtain the advance authorization of the Attorney General or any designated Assistant Attorney General before using any mechanical or electronic device to overhear, transmit, or record private conversations other than telephone conversations without the consent of all the participants. Such authorization is required before employing any such device, whether it is carried by the cooperating participant or whether it is installed on premises under the control of the participant.

Requests for authorization to monitor private conversations shall be addressed to the Attorney General, in writing, by the head of the department or agency responsible for the investigation, or his delegate, and shall state:

1. The reason why monitoring appears desirable, the means by which it would be conducted, the place in which it would be conducted, and its expected duration.

2. The names of the persons whose conversations would be monitored and their roles in the matter under investigation. When the name of the nonconsenting party or parties is not known at the time the request for authorization is made, the department or agency making the request shall supply such information to the Attorney General within 30 days after the termination of the monitoring.

3. That it is the considered judgment of the person making the request that monitoring is warranted in the interest of effective law enforcement.

Requests for authorization will receive prompt consideration by the Attorney General or his designee. To assure adequate time for considering a request and for notifying the requesting department or agency of the appropriate decision, it is important that each request be received by the Office of the Attorney General no less than 48 hours prior to the time of the intended monitoring. It should be clearly understood that the use of consensual devices will not be authorized retrospectively.

Where a request cannot be made in compliance with the 48-hour requirement, or in exigent circumstances precluding request for authorization in advance of the monitoring —such as the imminent loss of essential evidence or a threat to the immediate safety of an agent or informant— emergency monitoring may be instituted under the authorization of the head of the responsible department or agency or other agency official or officials designated by him. The Attorney General or his designee shall be notified promptly of any such monitoring and of the specific conditions that precluded obtaining advance approval, and shall be afforded the information enumerated above that would have been given in requesting advance approval. Each department and agency should develop procedures to assure that under such exigent circumstances its agents will be capable of acting expeditiously. The Attorney General or his designee shall be kept advised as to the identity of those officials who have been designated by department or agency heads to authorize such emergency monitoring. . . .''.[59]

---

[59] The foregoing is not published in the Federal Register nor in any other public document, and came to light and known to this Petitioner in February, 1978.

APPENDIX H

Washington, D.C. 20530

DESIGNATION OF ASSISTANT ATTORNEY GENERAL IN CHARGE OF THE CRIMINAL DIVISION AND HIS DEPUTIES TO AUTHORIZE THE CONSENSUAL MONITORING OF PRIVATE CONVERSATIONS.

Order No. 537-73

By virtue of the authority vested in me by 28 USC 509, 510 and 5 USC 301, I hereby designate the Assistant Attorney General in charge of the Criminal Division and the Deputy Assistant Attorneys General of that Division to authorize the monitoring of private conversations under the provisions of Part II(a) of the Attorney General's Memorandum of October 16, 1972, to the Heads of Executive Departments and Agencies entitled "Monitoring Private Conversations with the Consent of a Party." A Deputy Assistant Attorney General shall exercise such authority only when the Assistant Attorney General is absent from the City of Washington or is otherwise not in a position to take timely action on a request by a department or agency for authorization to monitor private conversations.

Dated: 9/4/73

Signature Illegible
Attorney General

APPENDIX I

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
March 10, 1978

Before
Hon. LUTHER M. SWYGERT, Circuit Judge
Hon. WALTER J. CUMMINGS, Circuit Judge

Nos. 76-2089, 76-2092 and 76-2093

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

ROBERT CRAIG, PETER V. PAPPAS and JACK E. WALKER,
Defendants-Appellants.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 74-Cr-879
George N. Leighton, Judge

This matter comes before the court for its consideration upon the filing herein of the following documents:

1) The "MOTION FOR LEAVE TO JOIN IN MOTION OF CO-DEFENDANT" filed herein on February 23, 1978 by counsel for the defendant-appellant Jack E. Walker only in Appeal No. 76-2093. That motion requests leave to join in the "MOTION FOR LEAVE TO REQUEST HEARING BEFORE DISTRICT COURT" previously filed by the defendant-appellant Robert Craig in Appeal No. 76-2089.

2) The "GOVERNMENT'S RESPONSE TO DEFENDANT-APPELLANT WALKER'S MOTION FOR LEAVE TO JOIN IN MOTION OF CO-DEFENDANT" filed herein on March 6, 1978 by counsel for the plaintiff-appellee only in Appeal No. 76-2093.

3) The "MOTION FOR RECONSIDERATION OF ORDER OF FEBRUARY 23rd, 1978 and of MOTION FOR LEAVE TO REQUEST HEARING BEFORE THE FEDERAL DISTRICT COURT" filed herein on March 6, 1978 by the pro se defendant-appellant Peter V. Pappas, only in Appeal No. 76-2092.

4) The "DEFENDANT-APPELLANT'S REPLY TO GOVERNMENT'S RESPONSE TO MOTION FOR LEAVE TO REQUEST HEARING BEFORE FEDERAL DISTRICT COURT" also filed herein on March 6, 1978 by the pro se defendant-appellant Peter V. Pappas, only in Appeal No. 76-2092.

5) The "MOTION FOR LEAVE TO JOIN IN MOTION AND REPLY FILED BY DEFENDANT-APPELLANT PETER V. PAPPAS" filed herein on March 7, 1978 by counsel for the defendant-appellant Jack E. Walker, only in Appeal No. 76-2093.

6) The "MOTION OF THE DEFENDANT-APPELLANT CRAIG FOR LEAVE TO ADOPT MOTION FOR RECONSIDERATION FILED BY PETER V. PAPPAS AND FOR LEAVE TO ADOPT HIS REPLY" filed herein on March 7, 1978 by counsel for the defendant-appellant Robert Craig, only in Appeal No. 76-2089.

This court has thoroughly reviewed the aforesaid documents and is fully advised concerning the circumstances of this matter. Accordingly,

It IS ORDERED that leave is hereby GRANTED to file instanter, nunc pro tunc as of the dates of their respective filings, documents numbers 4, 5 and 6 above.

IT IS FURTHER ORDERED that, treating the reply of the pro se defendant-appellant Peter V. Pappas as a motion in support of his motion for reconsideration of this court's previous order of February 23, 1978, said motion for reconsideration is hereby DENIED.

IT IS ALSO FURTHER ORDERED that the defendants-appellants Jack E. Walker and Robert Craig are hereby also DENIED reconsideration of this court's previous order of February 23, 1978.